

Proposed Amendments to Chapter 310
Wetland Protection rules
Draft 9/6/2001

Amend Title and “Preamble”, Section 1, as follows:

Chapter 310: WETLANDS AND WATERBODIES PROTECTION

- 1. Preamble.** The Legislature has found that the State's freshwater wetlands, great ponds, ~~and~~ coastal wetlands, rivers, streams, and brooks ~~collectively referred to as either wetlands or water bodies in this rule~~ are resources of state significance, that these resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical, and environmental value of present and future benefit to the citizens of the State, and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State. The Legislature has also found that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life. The terms "wetland", "wetlands", "waterbody", and "waterbodies" are used interchangeably and collectively in this rule to refer to freshwater wetlands, great ponds, rivers, streams, brooks, coastal wetlands, and the areas adjacent to them.

In recognition of the important roles of wetlands in our natural environment, the Board of Environmental Protection supports the nation-wide goal of no net loss of wetland functions and values. In some cases, however, the level of mitigation necessary to achieve no net loss of wetland functions and values through construction of replacement wetlands will not be practicable, or will have an insignificant effect in protecting the State's wetlands resources. In other cases, the preservation of unprotected wetlands or adjacent uplands may achieve a greater level of protection to the environment than would be achieved by strict application of a no net loss standard through construction of replacement wetlands. Therefore, the Board recognizes that a loss in wetland functions and values may not be avoided in every instance.

The purpose of this rule is to ensure that the standards set forth in Section 480-D of the Natural Resources Protection Act, Section 464, Classification of Maine Waters and Section 465, Standards for Classification of Fresh Surface Waters are met by applicants proposing regulated activities in, on, over or adjacent to a wetland or water-body.

Amend “Applicability”, Section 2(A), as follows:

2. Applicability

- A.** This rule applies to the alteration of a coastal wetland, great pond, ~~or~~ freshwater wetland, river, stream, or brook, as defined in 38 M.R.S.A. Sec. 480-B of the Natural Resources Protection Act (NRPA), that requires an individual permit or is eligible for Tier 2 or Tier 3 review. In addition, Sections 3 and 4 apply to the alteration of a freshwater wetland eligible for Tier 1 review.

Amend “Definitions”, Sections 3(A) and (V), as follows:

- 3. Definitions.** The following terms, as used in this rule, have the following meanings, unless the context indicates otherwise.

A. Adjacent to a Protected Natural Resource. The area within ~~400~~75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

~~NOTE: An activity adjacent to a protected natural resource is not regulated under the NRPA if existing barriers (i.e. ice berms, retaining walls) or site conditions (i.e. negative slope) are such that material or soil could not wash into the resource. Silt fence and hay bale barriers do not change the law's applicability to an activity.~~

~~**V. Vegetation Removal or Displacement.** "Removal or displacement" means cutting, herbicide spraying, uprooting, shading by structures or any other type of activity that results in a change in plant species diversification.~~

Amend “General Standards”, Section 5(A), as follows :

- 5. General Standards.** The following standards apply to all projects as described in Section 2.

A. Avoidance. No activity ~~that would cause a loss in wetland area, functions and values~~ shall be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application must provide an analysis of alternatives (see Section 9(A)) in order to demonstrate that a practicable alternative does not exist.

In wetlands of special significance, projects for which no practicable alternative may exist are limited to those necessary for:

- (1) Health and safety;
- (2) Crossings by road, rail or utility lines;
- (3) Water dependent uses;

- (4) Expansion of a facility or construction of a related facility that cannot practicably be located elsewhere because of the relation to the existing facility, if the existing facility was constructed prior to September 1, 1996;
- (5) Mineral excavation and appurtenant facilities; or
- (6) Walkways.

Amend “General Standards”, Section 5(C)(2), as follows:

- (2) Functional assessment. Resource functions that will be lost or degraded are identified by the department based upon a functional assessment done by the applicant and by the department's evaluation of the project. The functional assessment must be conducted in accordance with Section 9(B)(3) for all activities:
 - ~~(a) in wetlands of special significance; or~~
 - ~~(b) in all other wetlands which alter more than 20,000 square feet per project.~~
- ~~—The functional assessment is not required for the activities except for those listed in Section 5(C)(6) below.~~

Amend “General Standards”, Section 5(C)(6), as follows:

- (6) Exceptions. Neither a functional assessment nor compensation is required for the following single, complete projects:
 - (a) Freshwater wetlands
 - (i) Alterations of less than 500 square feet in a freshwater wetland of special significance provided that the department determines that there will be only a minimal effect on freshwater wetland functions and values, significant wildlife habitat or imperiled or critically imperiled community due to the activity;
 - (ii) Alterations of less than 20,000 square feet in a freshwater wetland not of special significance, provided that the department determines that there will be only a minimal effect on freshwater wetland functions and values due to the activity;
 - (iii) Alterations in a freshwater wetland for a road, rail or utility line crossing of a river, stream or brook for a distance of up to 100 feet from the normal high water line on

both sides, measured perpendicular to the thread of the river, stream or brook, provided:

- a. Any affected freshwater wetland does not contain significant wildlife habitat or a critically imperiled or imperiled community; and
 - b. The total project affects 500 square feet or less of the channel.
- (b) Coastal Wetlands. A coastal wetland alteration that does not cover, remove or destroy marsh vegetation, does not fill more than 500 square feet of intertidal or subtidal area, and has no adverse effect on marine resources or on wildlife habitat as determined by the Department of Marine Resources or the Department of Inland Fisheries & Wildlife as applicable.
- (c) Great Ponds. A great pond alteration that does not place any fill below the normal high water line, except as necessary for shoreline stabilization projects, and has no adverse effect on aquatic habitat as determined by the Department of Inland Fisheries & Wildlife or the Department of Environmental Protection.
- (d) Rivers, streams or brooks. A river, stream or brook alteration that does not affect more than 150 feet of shoreline for a private project or more than 300 feet of shoreline for a public project.
- ~~(de)~~ Walkways/Access structures. A wetland alteration consisting of a walkway or access structure for public educational purposes or to comply with the Americans with Disabilities Act.
- (7) Waiver. The department may waive the requirement for a functional assessment, compensation, or both. The department may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The department may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.